

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

LUIS TEREJO,

Plaintiff,

vs.

PORTFOLIO RECOVERY ASSOCIATES
LLC and WESTERN SURETY
COMPANY,

Defendants.

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CAUSE NO. AU-16-CV-767-SS

MOTION TO RECUSE

Pursuant to 28 USCS § 144 and 455, Plaintiff's counsel MICHAEL J. WOOD, CELETHA C. CHATMAN, ROBERT ZIMMER, AND TYLER HICKLE and Plaintiff LUIS TEREJO file this Motion to Recuse The Honorable Sam Sparks.

FACTS

On January 6, 2018, Judge Sparks referred Plaintiff's counsel to the Disciplinary Committee for the Western District of Texas in *Ozmun v. Portfolio Recovery Associates LLC et al.*, No. 1:16-cv-00940. *See* Appendix 1, letter to Karl Bayer, Chairman, Admissions/Discipline Committee (attachments omitted) (the "Disciplinary Referral"). In the Disciplinary Referral, Judge Sparks charges, among other allegations, that evidence suggests Plaintiff's counsel are involved in a scheme to force settlements from debt collectors by abusing the Fair Debt Collection Practices Act (the "FDCPA"). He attaches to the Disciplinary Referral a list of cases he has researched that include at least nine proceedings in other district courts. Plaintiff's counsel have filed extensive

responses to the Disciplinary Referral. They categorically deny they are involved in any “scheme” to “abuse” the FDCPA.

On April 2, 2018, Judge Sparks issued a sanctions order in this case [#52] that mirrors his allegations in the Disciplinary Referral. [#55, p. 7 (“[T]he evidence shows Plaintiff’s counsel is involved in a scheme to force settlements from debt collectors by abusing the FDCPA.”)] Plaintiff’s counsel will be timely filing a motion for new trial/reconsideration of the April 2 sanctions order that challenges Judge Spark’s findings in the sanctions order. In particular, the letter that Judge Sparks cites as “evidence” of the alleged “scheme” has been upheld in multiple courts.

Judge Sparks appears to have personal knowledge of disputed evidentiary facts that he acquired in part from cases that are not before him. Therefore, his knowledge was acquired extra-judicially. Further, his findings of a “scheme to force settlements from debt collectors” exhibit a personal bias or prejudice in favor of the Defendants in this case. Accordingly, Plaintiff’s counsel file this motion in good faith.

RECUSAL STANDARDS

Under 28 U.S.C. § 455(a) and (b)(1), recusal is required when the judge “has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding,” or when the judge’s “impartiality might reasonably be questioned.” Under 28 U.S.C. § 144, recusal is required if a party “files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party.”

Therefore, Plaintiff’s counsel respectfully request that the Court recuse from this matter.

DATED: April 26, 2018,

Respectfully submitted,

/s/ Ruth A. Kollman

Ruth A. Kollman, Of Counsel
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/s/ Michael J. Wood


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**ATTORNEYS FOR PLAINTIFF
LUIS TEREJO**

AFFIDAVIT UNDER PENALTY OF PERJURY

STATE OF ILLINOIS §
 §
COUNTY OF COOK §

I declare under penalty of perjury that I have read the above Motion to Recuse, and the statements of fact stated therein are within my personal knowledge unless otherwise stated and are true and correct.

Signed on this the 26th day of April, 2018.

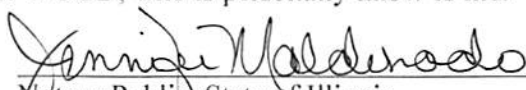


Michael J. Wood

STATE OF ILLINOIS §
 §
COUNTY OF COOK §

SUBSCRIBED AND SWORN TO on the 26th day of April, 2018 BEFORE ME, the undersigned Notary Public, by MICHAEL J. WOOD, who is personally know to me.





Notary Public, State of Illinois
Printed Name Jennifer Maldonado
Comm. Expires March 15, 2020
Commission No. _____

Certificate of Conference

I hereby certify that on April 24 and 26, 2018, I conferred with Robbie Malone by telephone about the foregoing motion. Ms. Malone opposes the motion.

/s/ Ruth A. Kollman

Certificate of Service

I hereby certify that on the 26th day of April 2018, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to:

Robbie Malone
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/s/ Michael J. Wood

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LUIS TEJERO,

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CAUSE NO. AU-16-CV-767-SS

Hon. Sam Sparks

ORDER GRANTING PLAINTIFF'S MOTION TO RECUSE

After considering Plaintiff's Motion to Recuse, and any response or reply filed, the Honorable Sam Sparks hereby recuses.

SIGNED on _____, 20____.

THE HONORABLE SAM SPARKS
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS